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FILED/ACCEPTED

APR - 2 2007

April 2, 2007

Federal Communications Commission
Office of the Secretary

BY HAND

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Attn: Chief, Media Bureau

Re: *Knology, Inc., Request for Waiver of 47 C.F.R. § 76.1204(a)(1)*

Dear Ms. Dortch

On behalf of Knology, Inc., we submit the original **and** four (4) copies of the above-referenced Request for Waiver. The \$1250.00 filing fee has been submitted by wire transfer. We have also filed a copy of this Request electronically in CS Docket 97-80.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

KNOLOGY, INC.

By 

Martin L. Stern

Scott C. Nelson

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202-628-1700

Attorneys for Knology, Inc.

Enclosure

No. of Copies rec'd 044
List A B C D E

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APPLICATION FEE PAID BY WIRE TRANSFER

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READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDINGFEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICEFederal Communications Commission
Office of the Secretary
3060-0589
Page 1 of 1

(1) LOCKBOX # 358205

358205

SPECIAL USE ONLY

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card enter name exactly as it appears on the card)
K&L Gates(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)
\$1,250.00(6) CITY
Washinoton(7) STATE
DC(8) ZIP CODE
20006(9) DAYTIME TELEPHONE NUMBER (include area code)
202-628-1700

(10) COUNTRY CODE (if not in U.S.A.)

(11) PAYER (FRN)
0008922023

(12) FCC USE ONLY

(16) CITY
West Point(17) STATE
GA(18) ZIP CODE
31833

706-645-8553

FCC REGISTRATION NUMBER (FRN) REQUIRED

(21) APPLICANT (FRN)
0005066493

(22) FCC USE ONLY

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

TQC

1

(26A) FEE DUE FOR (PTC)

(27A) TOTAL FEE

FCC USE ONLY

\$1,250.00

\$1,250.00

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

CERTIFICATION STATEMENT

I, Martin Lester, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.SIGNATURE Martin LesterDATE 4/2/07

SECTION E - CREDIT CARD PAYMENT INFORMATION

MASTERCARD _____ VISA _____ AMEX _____ DISCOVER _____

ACCOUNT NUMBER _____

EXPIRATION DATE _____

I hereby authorize the FCC to charge my credit card for the service(s)/authorization herein described.

SIGNATURE _____

DATE _____

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Knology, Inc.)	CSR -- _____
Request for Waiver of)	
47 C.F.R. § 76.1204(a)(1))	

To: Chief, Media Bureau

REQUEST FOR WAIVER

Knology, Inc. ("Knology"), on behalf of itself and its subsidiaries, hereby requests a limited waiver of Section 76.1204(a)(1) of the rules of the Federal Communication Commission ("FCC" or "Commission"), 47 C.F.R. § 76.1204(a)(1), pursuant to Sections 76.1207, 1.3, and 76.7 of the Commission's rules, 47 C.F.R. §§ 76.1207, 1.3, 76.7.

I. INTRODUCTION AND BACKGROUND

A. Background on Knology

Knology is a competitive provider of voice, video, and broadband services in the Southeast United States, and is a franchised cable operator in each of the markets where it provides multichannel video programming services.¹ Knology's offerings include over 200 channels of digital cable TV, local and long distance digital telephone service with the latest enhanced voice messaging features, and high-speed Internet access, which enable consumers to

¹ Knology's acquisition of PrairieWave Communications, Inc. ("PrairieWave"), a small, competitive provider of voice, video, and broadband services in South Dakota, southwestern Minnesota, and northwestern Iowa, is in the process of closing, and PrairieWave is not presently a party to this request.

quickly download video, audio and graphic files using a cable modem. Knology also provides advanced communications services through its video offerings, such as Video on Demand (“VOD”), subscription VOD, digital video recorders, High-Definition Television, and interactive television. Knology provides these services over its wholly-owned, fully upgraded 750 MHz interactive broadband network.

Knology provides service in the following markets: Augusta, Georgia; Columbus, Georgia; Huntsville, Alabama; Knoxville, Tennessee; Montgomery, Alabama; Pinellas County, Florida; Panama City, Florida; West Point, Georgia; and Charleston, South Carolina. In each of these markets, prior to Knology’s entry, the markets were served exclusively by monopoly incumbent cable operators. Comcast overlaps with Knology in five markets; Charter Communications overlaps in four markets; MediaCom overlaps in two markets; and Time Warner and Bright House Networks each overlap in one Knology market. Each of the incumbent cable operators with which Knology competes are among the top ten largest cable operators in the nation, including Comcast (24.2 million subscribers) and Time Warner (11 million subscribers), which **are** the nation’s first and second largest cable operators, respectively.² By comparison, Knology has about 180,000 video connections in its service areas.

B. Relief Requested

Under section 76.1204(a)(1) multichannel video programming distributors (“MVPDs”) are prohibited from placing in service “navigation devices,” including set top boxes (“STB”), that combine conditional access and other functions in a single integrated device as of July 1,

² *Matter of Annual Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, Table B-3 (2006). According to the report, Comcast has 22.99% of subscribers, Time Warner has 11.69%, Charter has 6.37%, Bright House has 2.34%, and MediaCom has 1.55%.

2007 (the “Integration Ban”).³ Knology requests waiver of the Integration Ban on two distinct grounds.

First, in anticipation of the Integration Ban deadline, Knology is placing orders for Cablecard-compliant STBs sufficient to meet its near-term needs for new activations, retirement of existing equipment, and replacements for faulty STBs, which is based upon a historical and predictable failure rate. That being said, Knology has no guarantee that the Cablecard-compliant STBs will be delivered in time for it to have sufficient inventory to meet the July 1, 2007 deadline.

It is Knology’s experience that during times in which STB producers are phasing out production of existing models and expanding production of newer models, backlogs in available inventory are often created and the failure rate of individual STBs is typically higher than later in the production cycle. Based on its experience, Knology also expects allocation of orders given **the** high demand and limited availability of STBs in anticipation of the Integration Ban, particularly as suppliers prioritize order fulfillment based on order size. Thus, Knology requests a limited extension of time for delivery of the pre-ordered STBs and technical compliance with **the** Integration Ban, to **the** extent it does not receive Cablecard-compliant STBs in a timely manner.

Second, at such time as its inventory of Cablecard compliant-STBs becomes depleted, Knology **seeks** a waiver to allow it to use non-compliant STBs pending delivery of an STB that includes a downloadable security solution. **As** the Commission is aware, the Cablecard solution is fast becoming obsolete, in favor of lower cost, higher functionality STBs that make use of a

³ The Integration **Ban** was adopted by the Commission pursuant to section 629(c) of the Communications Act of 1934, as amended (“Communications Act”), 47 U.S.C. § 549(a), which generally requires the Commission to adopt regulations to assure the commercial availability to consumers of STBs and other navigation devices from vendors not affiliated with MVPDs.

downloadable security solution. While Knology purchases sufficient STBs to handle its anticipated needs on a quarter-by-quarter basis, over the long term Knology would like to transition to downloadable security devices.

Moreover, as discussed above, Knology faces video competition from an incumbent cable operator in each market in which it operates, and its customer base is very price sensitive. Accordingly, Knology cannot recover the costs of the new Cablecard-compliant STBs and remain competitive. Forcing it to continue to purchase Cablecard devices into the future, when a downloadable security box may be available as soon as 2009, is forcing it to make unnecessary duplicative investment, which as a competitive operator, it cannot recoup, forcing it to divert funds from investment in its plant and services. The better approach would be to grant Knology a waiver of the Integration Ban, so that when its stock **of** Cablecard STBs is depleted, it can use non-compliant boxes pending availability of an STB ~~with~~ downloadable security.

11. WAIVER IS NECESSARY FOR KNOLOGY TO EFFECTIVELY COMPETE IN THE MVPD MARKET, AND GOOD CAUSE IS SHOWN FOR WAIVER UNDER THE COMMISSION'S RULES.

A. The Commission May Allow A Waiver Of Section 76.1204(a)(1) Under Its Rules.

Section 629(c) of the Communications Act specifically allows for waiver of the Integration Ban:

[t]he Commission shall waive a regulation adopted under subsection (a) *of* this section for a limited time upon an appropriate showing . . . that such waiver is necessary to assist the development or introduction *of* a new or improved multichannel video programming or other service offered over multichannel video programming systems, technology, or products.⁴

⁴ 47 U.S.C. §549(c); *see* 47 C.F.R. § 76.1207.

In addition, the Commission may, as it recently has, waive the requirements of the Integration Ban under sections 1.3 and 16.7 of its rules, 47 C.F.R. §§ 1.3, 16.7.⁵ The Media Bureau addressed such waivers in its 2005 *Integration Ban Order*,⁶ indicating that it would consider waivers for limited capability set-top boxes requests, as well as waivers based upon the “necessary to assist” standard of Section 629(c) and the general “public interest” standard.’

The overriding goal of Section 629 was to bring about “innovation, lower prices and higher quality for consumers.” At the same time, in the 2005 *Integration Ban Order*, the Commission recognized that it would be contrary to the consumer-oriented intent of the integration ban if it resulted in elimination of low-cost options for consumers, noting that “achieving consumer choice by establishing a competitive market should not displace a low-cost STB option for MVPD subscribers.”⁹

In addition, as a matter of policy, the Commission has previously been concerned about the Integration Ban’s effect on new competition and new technologies and services. In this regard, the Commission explicitly declined to apply the Integration Ban to DBS, noting that “Congress intended ‘that the Commission avoid actions which could have the effect of freezing or chilling the development of new technologies and services.’” Thus the Commission justified an exemption for DBS as being “necessary to assist the development or introduction of a new or

⁵ *Matter of Bend Cable Communications, LLC d/b/a BendBroadband, Request for Waiver of Section 76.1204(a)(1) of the Commission’s Rules*, Memorandum Opinion and Order, 22 FCC Rcd 209 (2007) (“*BendBroadband Order*”) (Section 1.3 notes that “[t]he provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”).

⁶ *In re Implementation of Section 304 of the Telecommunications Act of 1996*, Second Report and Order, 20 FCC Rcd 6794, 6813 (2005) (“2005 *Integration Ban Order*”).

⁷ *Id.*

⁸ H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 112 (1995).

⁹ 2005 *Integration Ban Order*, 20 FCC Rcd at 6813.

¹⁰ S. Rep. 104-230, at 181 (1996) (Conf. Rep.).

improved' service, such as, for example, a nascent MVPD offering from a new competitor.'”
Similarly, the Commission has also previously **been** specifically concerned about the impact of the Integration Ban on small providers.¹²

Finally, in a recent order regarding a waiver request of a similarly situated video provider, the Commission indicated it would allow a deferral of enforcement of the compliance deadline “so long as it can demonstrate that it has placed orders for set-top boxes that comply with the integration ban but that its orders will not be fulfilled in time for it to comply with the deadline.”¹³ The Commission based this conclusion on the “difficulties that small cable operators may face in complying with the July 1, 2007 deadline, particularly since manufacturers may prioritize orders from the largest cable operators.”¹⁴

B. Knology Is A New Competitor As Envisioned By The Commission In Its 2005 Integration Ban Order.

Taking the foregoing factors into account, Knology submits that its offerings and competitive service meet the standards set forth for waiver of the Integration Ban, and is ripe for a limited waiver in order to (1) allow it to continue to deploy non-compliant STBs in the event its

¹¹ *Implementation of Section 304 of the Telecommunications Act of 1996: Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, 14801 (1998) (declining to apply the Integration Ban to DBS providers and noting that “in many instances, the Commission refrains from imposing regulations on new entrants”). Ironically, DirecTV and Echostar, while exempt from the integration ban as new DBS competitors, have grown to the second and third largest MVPDs in the country with a combined subscriber base as of June 2005 of 27 percent of the MVPD market. *Matter of Annual Assessment of the Status of Competition in the Mkt. for the Delivery of Video Programming*, Twelfth Annual Report, 21 FCC Rcd 2503, 2617 (2006).

¹² It has been shown that there could be negative impacts on small systems as a result of compliance with the obligations, and the Commission determined that “[t]o the extent that small cable systems would experience economic hardship as a result of these obligations, we will consider waiver requests on a case-by-case basis.” *Matter of BellSouth Interactive Media Servs., LLC and BellSouth Entm’t, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 15607, 15610 (2004).

¹³ See *BendBroadband Order*, 22 FCC Rcd at ¶ 20.

¹⁴ *Id.* at ¶ 10.

Cablecard STB order is not timely fulfilled,¹⁵ and (2) avoid the need for additional unnecessary expenses through reordering Cablecard-compliant boxes once its inventory of compliant boxes is depleted.

Knology is a new entrant offering competitive MVPD service and, as noted above, is competing with larger providers that have nationwide reach and a greater ability to make the kind of capital expenditures necessary to comply with the Integration Ban. In Knology's case, the increased cost of high end STBs would force it to incur unnecessary expenses that it could not recoup, when a superior downloadable solution is a year to two years away.¹⁶

C. Denial Of Waiver Will Materially Harm Competition, Thus Good Cause Exists For A Limited Waiver.

Denial of the waiver would prove damaging to a primary goal of the Commission. As Chairman Martin recently remarked in his statement regarding video franchising,

“[g]reater competition in the market for the delivery for multichannel video programming is a primary and long-standing goal of federal communications policy. In passing the 1992 Cable Act, Congress recognized that competition between multiple cable systems would be beneficial, would help lower cable rates, and specifically encouraged local franchising authorities to award competitive franchises.”¹⁷

The consumer benefit of competition by wireline providers in the MVPD market is clear. As the Commission has previously observed, “[c]able prices decrease substantially when a

¹⁵ Knology hereby confirms that it is placing orders for set top boxes compliant with the requirements of 47 C.F.R. § 76.1200 *et seq.* but has no assurance of those set-top boxes being delivered in time to meet the compliance deadline.

¹⁶ As noted above, the waivers requested by Knology are limited to the point at which a downloadable security solution is available and the Integration Ban becomes functionally obsolete. It is Knology's understanding that such a solution will be available within a short time horizon. *See* Comments of the American Cable Association on the RCN Corporation Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 3. (“Petitioners’ lower-income and smaller-market subscribers will be unable to span the digital divide unless Petitioners are permitted to continue to deploy low-cost, integrated set-top boxes . . . For this reason ACA asks that the Commission grant an unconditional waiver of the integration ban to all small and medium-sized cable operators until the earlier of December 31, 2009, or the availability of downloadable security.”)

¹⁷ *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, FCC 06-180 (rel. March 5, 2007) (Statement of Chairman Martin).

second wireline cable operator enters the market.”¹⁸ Indeed, the Commission has found that prices were over twenty percent higher in areas without a second cable operator.” This has been particularly *true in markets* in which *Knology* has entered.

Failure to grant the waiver will adversely affect Knology and competition in several ways, contrary to these important policy goals. Moreover, Knology will be directly harmed by being forced to make investments that cannot be recouped in high cost obsolete boxes, when STBs with downloadable security are at most two years away. For all these reasons good cause exists for a waiver of Section 76.1204(a)(1) of the Commission’s rules.

D. Grant of This Waiver Will Not Materially Harm Manufacturers Or Retailers of STBs And Will Foster Competition in the MVPD Market.

In creating the Integration Ban, Congress and the Commission intended to ensure that the market for STBs remained competitive and beneficial to consumers. However, Knology’s relatively small subscriber base and the narrow construction of the requested waiver will ensure that the manufacturers and retailers of set top boxes will not be harmed and that the market will remain competitive. Even the Consumer Electronics Association, in comments regarding waiver for an MVPD with over one million customer connections, has admitted that they are “sympathetic to the plight of smaller cable operators that are effectively at the mercy of product decisions taken by the major MSOs and the unilateral dictates of entrenched vendors . . .”²⁰

In addition, if the Commission were not to grant this waiver, it will be sacrificing competition in the MVPD market without creating any meaningful competition on the market for

¹⁸ *Matter of Implementation of Section 3 of the Cable Television Consumer Prot. and Competition Act of 1992, Statistical Report on Average Rates for Basic Serv., Cable Programming Serv., and Equip.*, Report, 21 FCC Rcd 15087, 15091 (2006).

¹⁹ *Id.*

²⁰ Comments of the Consumer Electronics Association on the RCN Corporation Request for Waiver of 47 C.F.R. § 76.1204(a)(1) at 3.

navigation devices. Although the goal of the Integration Ban is to foster competition in the set top box market, it is also a primary goal of the Commission to foster competition in the MVPD market, as noted above. Essentially, denial of this waiver poses much greater risk of harm to competition in the MVPD market than to the STB market, and for this reason as well, it should be granted.

III. CONCLUSION

For the foregoing reasons, Knology hereby requests a limited waiver of 47 C.F.R. § 76.1204(a)(1).

Respectfully submitted,

KNOLOGY, INC.

By: 

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Attorneys for Knology, Inc.

Dated: April 2, 2007

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of

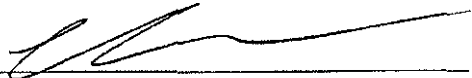
Knology, Inc.
Request for Waiver of
47 C.F.R. § 76.1204(a)(1)

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CSR -- _____

DECLARATION OF CHAD S. WACHTER

1. My name is Chad S. Wachter, I am the Vice President and General Counsel for Knology, Inc. By virtue of my position, I am familiar with Knology's equipment acquisition plans with respect to digital set top boxes.
2. I have read the foregoing Request for Waiver ("Request") and I am familiar with the contents thereof.
3. I declare under penalty of perjury that the facts contained herein and within the foregoing Request are true and correct to the best of my knowledge, information, and belief.



Chad S. Wachter
Vice President and General Counsel
Knology, Inc.
Executed on: April 2nd 2007